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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WAYNE BROWN, JOSEPH HERBERT MCINTYRE,
MICHAEL A. PAOLINI, JAMES MARK WEAVER,
and SCOTT LEE WINTERS

Appeal 2007-3982
Application 10/015,267
Technology Center 2600

Decided: April 11, 2008

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and KEVIN F. TURNER, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-4, 8-15, 19-26, 30, 40, 41, 43-46, and 48-52.[1] We have

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[1] Claims 5-7, 16-18, 27-29, 42, and 47 have been indicated as containing allowable subject matter. Also, claims 31-39 have been withdrawn from consideration and are therefore not before us (Ans. 2).

jurisdiction under 35 U.S.C. § 6(b). We reverse and enter new grounds of rejection under 37 C.F.R. § 41.50(b).

STATEMENT OF THE CASE

Appellants invented a telecommunications system that identifies a called party. Specifically, voice utterances are detected at an origin device, and a callee's identity associated with the voice utterance is identified at the origin device.[2] Claim 1 is illustrative.

1. A method for identifying a particular callee, said method comprising:

detecting, at an origin device, a voice utterance of a callee from a destination device;

identifying, at said origin device, a callee identity associated with said voice utterance, such that said callee identity is transmittable as an authenticated identity of said callee for a call.

The Examiner relies on the following prior art references to show unpatentability:

Baker	US 5,533,109	Jul. 2, 1996
Velius	US 5,594,784	Jan. 14, 1997
La Porta	US 6,041,103	Mar. 21, 2000
McAllister	US 6,101,242	Aug. 8, 2000
Bartholomew	US 6,167,119	Dec. 26, 2000
Gallick	US 6,678,359 B1	Jan. 13, 2004 (filed Apr. 6, 2000)

[2] *See generally* Spec. 5:4-28.

1. Claims 1, 4, 11, 12, 15, 22, 23, 26, 50, and 51 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gallick.
2. Claims 2, 8, 13, 19, 24, and 30 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gallick and Bartholomew.
3. Claims 3, 14, and 25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gallick and McAllister.
4. Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gallick and Baker.
5. Claims 10 and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gallick and La Porta.
6. Claims 40, 41, 43-46, 48, 49, and 52 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gallick and Velius.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Brief[3] and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

[3] We refer to the Brief filed September 22, 2006 throughout this opinion.

OPINION

The Anticipation Rejection

We first consider the Examiner's anticipation rejection of claims 1, 4, 11, 12, 15, 22, 23, 26, 50, and 51 over the disclosure of Gallick. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984); *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554 (Fed. Cir. 1983).

The Examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of Gallick (Ans. 3-5). Appellants argue that the voice over IP (VoIP) feature server 160 in Gallick is not an "origin device" as claimed given the ordinary and customary meaning of the term and its usage in the Specification.[4] According to Appellants, an "origin device" refers to a device originating a call, but Gallick's feature server is not such a device and is distinct from both the VoIP softphones and telephone in Figure 1 of the reference (App. Br. 7-8).

Although Appellants acknowledge that Gallick teaches capturing and analyzing the first utterances of the called party, Appellants emphasize that Gallick is silent regarding exactly where these functions occur. In any

[4] Specifically, Appellants refer to page 11, lines 1 through 15 of the Specification which states, in pertinent part, "[T]elephony devices are termed origin devices when utilized for origination of a call to an intermediary device…." (App. Br. 8).

event, Appellants argue the reference subsequently indicates that local voice recognition occurs on a computer or server on the network where the destination softphone resides (App. Br. 9).

The Examiner contends that Gallick's feature server is an "origin device" since it sends (1) the H.323 Admissions Confirm ACF signal to the called subscriber, and (2) the H.323 Alerting signal to the calling subscriber as shown in Figure 6. The Examiner adds that since the feature server provides the called party's IP address to the calling party, the feature server is an "origin device" of IP address information (Ans. 11-12).

The issues before us, then, are:

(1) whether Gallick's feature server is an "origin device" as claimed; and

(2) if so, whether the recited callee identification functions are performed at such an "origin device," namely

(a) detecting an utterance of a callee from a destination device, and

(b) identifying a callee identity associated with the voice utterance such that the callee identity is transmittable as an authenticated callee identity.

In construing the term "origin device," we first turn to Appellants' Specification for guidance. The Specification expressly states that "[f]or purposes of the present invention, telephony devices are termed *origin devices* when utilized for *origination of a call to an intermediary device*…. " (Spec. 11:1-3 (emphasis added); Spec. 11:10-12 (same)). This statement,

in our view, effectively defines the term "origin device" with respect to the claimed invention.[5] Moreover, the Specification notes that an "intermediary device" "may include, but is not limited to, a PSTN switching network, a PBX, a call center, a private switching system, network servers, telco application servers, Websphere7…servers, and other systems which provide *call processing functions*" (Spec. 25:17-22; emphasis added).

At first blush, these passages seem to suggest that the "origin device" in Gallick would most reasonably correspond to the caller's VoIP softphone or VoIP telephone (140-142) as these devices are certainly telephony devices that originate calls to an intermediary device[6] -- a function entirely consistent with the Specification description. These passages would further suggest that the "intermediary device" in Gallick would most reasonably correspond to the feature server, particularly in view of its intermediary role with respect to the connection between caller and callee as shown in Figure 6.

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[5] *See Phillips v. AWH Corp.,* 415 F.3d 1303, 1321 (Fed. Cir. 2005) (en banc) ("[T]he specification is the single best guide to the meaning of a disputed term, and…acts as a dictionary when it expressly defines terms in the claims or when it defines them by implication.") (internal quotation marks and citations omitted).

[6] Gallick discloses a packet switched IP network which serves plural computer terminals 140, 141 running VoIP "softphone" software and/or dedicated VoIP telephones. Feature server 160 performs gatekeeper functions and regulates communications connections among these computer terminals and VoIP telephones, as well as connections between these devices and gateway 130 (Gallick, col. 2, ll. 38-50; Fig. 1).

But the Specification further notes that "origin device 40 may include a caller telephony device....However, origin device 40 may also include a PBX, call center or other private switching system that manages multiple telephony devices. Moreover, origin device 40 may include network servers, *feature servers*, and other systems *which provide call origination*" (Spec. 24:27-25:5; emphasis added).

As the above passage indicates, "origin devices" are not only not limited to caller telephony devices, the term even contemplates *feature servers* so long as they "provide call origination." Certainly, Gallick's feature server at least in part "provides call origination" in its gatekeeping role as shown in Figure 6. As shown in that figure, the feature server, among other things, accepts and confirms the caller's admission request (ARQ) message and provides the caller with the callee's IP address. Call setup then continues with messages sent from the caller to the callee (Gallick, col. 2, l. 55 - col. 3, l. 2; col. 6, ll. 27-34; Fig. 6).

The clear import of this discussion is that the feature server in Gallick is an essential component in setting up a call between the caller and the callee. Therefore, the feature server, at least in part, "provides call origination" in its gatekeeping role. The feature server thus fully meets an "origin device" when term is interpreted in light of the Specification.[7]

[7] To the extent that the feature server also functions as an "intermediary device" in view of its call processing functions, we note that nothing in the claim precludes such dual functionality.

However, we find nothing in Gallick indicating that the feature server necessarily *detects a voice utterance of the callee* as claimed. As shown in Figure 6, after the second H.323 (Connect) message is sent to the caller, the feature server is no longer utilized and communication occurs solely between the caller and the callee. Significantly, the second to last communication (i.e., labelled "media (voice) path open" in Figure 6) is the communication in which voice utterances are exchanged between the parties. As Figure 6 indicates, this voice path is directly between the caller and callee and, in effect, bypasses the feature server.

Furthermore, Figure 1 of Gallick clearly distinguishes communication paths 151, 152 connecting the softphones to the feature server 160 from paths 153 and 154 which directly connect the softphones -- a distinction that clearly indicates that the feature server can be bypassed. This distinction, considered with the limited gatekeeping function of the feature server described in Gallick, only reinforces our conclusion that the feature server may not be involved in voice communication between the parties apart from its initial role during call setup.

To be sure, Gallick does teach (1) capturing the callee's voice utterances, (2) analyzing these utterances to identify the person answering the call at the called facility, and (3) transmitting a message identifying the answering party to the caller (Gallick, col. 3, ll. 44-53; col. 6, ll. 3-20, 47-56; Fig. 2b). But it is hardly clear from Gallick that the *feature server* performs this voice analysis: at best, the reference is ambiguous on this point.

In particular, Gallick teaches that phrases are captured and sent to (1) a local voice identification recognizer located on the local personal computer where the softphone resides or, (2) on a *server* on a network where the softphone resides (Gallick, col. 6, ll. 11-14). While the feature server is certainly "a server on a network where the softphone resides," we cannot say that such a server with voice analysis capability is *necessarily* the feature server. Rather, there may be many other servers on the managed IP network that could perform this voice analysis function, particularly noting the feature server's primary gatekeeper role noted above. To assert that the feature server necessarily performs the voice analysis function in addition to its other functions would require us to resort to speculation. That we will not do.

Therefore, since the "origin device" identified by the Examiner does not necessarily perform the recited callee identification functions recited in independent claims 1, 12, 23, and 50, including, among other things, detecting a callee's voice utterance, we are constrained by the record before us to reverse the Examiner's anticipation rejection of those claims and the claims dependent thereon.

The Obviousness Rejections

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so

doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Discussing the question of obviousness of a patent that claims a combination of known elements, the Court in *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007) explains:

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [*v. AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock*[*, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR, 127 S. Ct. at 1740. If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that "there was an apparent reason to combine the known elements in the fashion claimed." *Id.*, 127 S. Ct. at 1740-41. Such a showing requires "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged

claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

If the Examiner's burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Regarding the obviousness rejections of (1) claims 2, 8, 13, 19, 24, and 30 over Gallick and Bartholomew; (2) claims 3, 14, and 25 over Gallick and McAllister; (3) claims 9 and 20 over Gallick and Baker; (4) claims 10 and 21 over Gallick and La Porta; and (5) claims 40, 41, 43-46, 48, 49, and 52 over Gallick and Velius, we find that the disclosures of the cited secondary references do not cure the deficiencies noted above with respect to the Examiner's specific interpretation of Gallick.

That said, however, we do not find Appellants' arguments persuasive pertaining to the combinability of the secondary references with Gallick (App. Br. 17-31). That is, we find the Examiner's prima facie case of obviousness deficient *solely* on the basis of the Examiner's incorrect interpretation of Gallick noted above -- not on the combinability of the cited secondary references with Gallick.[8] In fact, as indicated *infra* in the new

[8] Nor are we persuaded by Appellants' contention (App. Br. 31-34) that the Examiner's obviousness rejections allegedly failed to consider the factual inquiries in *Graham v. John Deere*. On the contrary, the Examiner's obviousness rejections (1) articulated the scope and content of the prior art

grounds of rejection, we find these references are amply combinable with Gallick to establish a prima facie case of obviousness.

New Grounds of Rejection Under 37 C.F.R. § 41.50(b)

Under 37 C.F.R. § 41.50(b), we enter new grounds of rejection under 35 U.S.C. §§ 101-103 as indicated below.

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as perceived by the Examiner, (2) ascertained the differences between the prior art and the claimed invention, and (3) indicated how and why the cited prior art would have been modified to arrive at the claimed invention. Although no specific findings were made regarding the level of ordinary skill in the art, no such specific findings are required where, as here, the prior art itself reflects such a skill level. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("While it is always preferable for the factfinder below to specify the level of skill it has found to apply to the invention at issue, the absence of specific findings on the level of skill in the art does not give rise to reversible error where the prior art itself reflects an appropriate level and a need for testimony is not shown.") (internal quotation marks and citations omitted).

Claims 23-30, 50 and 51 are Unpatentable Over 35 U.S.C. § 101

Under 37 C.F.R. § 41.50(b), we enter new grounds of rejection under 35 U.S.C. § 101 for claims 23-30, 50, and 51. 35 U.S.C. § 101 provides:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23-30, 50 and 51 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Independent claims 23 and 50 recite, in pertinent part, a computer program product comprising a recording medium with means recorded on the medium to perform the recited functions. The Specification indicates that "computer readable media include recordable-type media, such as a floppy disk, a hard disk drive, a RAM, CD-ROMs, DVD-ROMs, and *transmission-type media, such as digital and analog communication links, wired or wireless communications links using transmission forms, such as, for example, radio frequency and light wave transmissions*" (Spec. 37:22-27; emphasis added). Thus, reading independent claims 23 and 50 in light of the Specification, the recited "computer readable medium" of these claims encompasses a carrier medium that conveys a signal.

Signals are not patentable subject matter under § 101. *In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007). Although the court in *Nuijten* acknowledged the Board's finding that an allowed claim reciting a storage

medium with a signal stored thereon[9] "nominally puts the claims into the statutory category of a 'manufacture,'" this claim was nonetheless not before the court. *See Nuijten*, 500 F.3d at 1351-52; *see also id.* at 1357 n.6.

In any event, a carrier medium that *conveys* a signal (e.g., a carrier wave) is distinguished from a tangible medium that *stores* a signal (e.g., a disk, memory, etc.), particularly with respect to the functionality of independent claims 23 and 50. These claims, in effect, call for means to interact with the computer to perform specific functions. It is our view that the computer cannot perform the claimed functions while the instructions are within signals conveyed by a carrier wave.

Specifically, information sent by a carrier wave conveying signals is transmitted by modulating the carrier wave or signal with the information. This information must be received and demodulated before the information is available for use. Thus, the information, *while on the carrier wave or signal*, is unavailable to the computer for performing the functions recited in independent claims 23 and 50. It is also likely that all the information necessary to perform the functions of claims 23 and 50 never exists within the carrier wave or signal at any one time. In other words, it is typical for information that is transmitted by signals conveyed by carrier waves to begin to be received at the receiver before all the information is transmitted. Therefore, it appears to us that program instructions for carrying out the

[9] *See Nuijten*, 500 F.3d, at 1351 ("Nuijten's allowed Claim 15 is directed to '[a] storage medium having stored thereon a signal with embedded supplemental data…'").

claimed invention cannot exist while the information is being transmitted via signals conveyed by a carrier wave.

Furthermore, while the exemplary "transmission-type media" disclosed on page 37 of the Specification certainly implicates physical carriers of information, the disclosure hardly limits the carriers to these examples. Rather, nothing in the passage precludes the use of any tangible means of information carriage.[10]

Thus, when read in light of the Specification, independent claims 23 and 50 include both statutory subject matter (signals stored on a tangible medium) and non-statutory subject matter (signals conveyed by a carrier medium). According to USPTO guidelines, however, such claims must be amended to recite solely statutory subject matter.[11]

For the foregoing reasons, independent claims 23 and 50 or the claims dependent thereon do not recite statutory subject matter under 35 U.S.C. § 101.

Claims 1 and 52 are Anticipated by Gallick

Claims 1 and 52 are rejected under 35 U.S.C. § 102(e) as being anticipated by Gallick. The scope and breadth of the claims does not

[10] *Cf. Nuijten*, 500 F.3d at 1353 ("[W]hile the claims are limited so as to require *some* physical carrier of information, they do not in any way specify *what* carrier element is to be used.") (emphasis in original).
[11] *See* MPEP, Rev. 6, Sept. 2007 ("MPEP") § 2106(C)(2)(2)(a) ("[A] claim that can be read so broadly as to include statutory and nonstatutory subject matter must be amended to limit the claim to a practical application.").

preclude Gallick who discloses an "origin device" (VoIP softphone 140)[12] that detects a voice utterance of a callee from a "destination device" (VoIP softphone 141) *during the voice conversation of the call itself.* In addition, upon capturing and analyzing the callee's voice utterances, a message identifying the answering party is transmitted to the caller (Gallick, col. 3, ll. 44-53; col. 6, ll. 3-20, 47-56; Fig. 2b). Upon receipt of this message, the callee is identified at the origin device -- an identity that is associated with the voice utterance.

Regarding claim 52, the VoIP softphone 140 ("origin device") noted above is also a "call initiating telephony apparatus."

Obviousness Rejections

Claims 1, 2, 4, 8, 11-13, 15, 19, 22-24, 26, 30, 40, 41, 43-45, 46, and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallick and Bartholomew. Gallick discloses all of the claimed subject matter except for the "origin device" (feature server 160)[13] to detect a voice

[12] Although we find the feature server is an "origin device" as noted previously, the VoIP softphone also functions as an "origin device" as it, too, provides call origination. Accordingly, this anticipation rejection is based on the recited "origin device" corresponding to the softphone in Gallick. However, in the obviousness rejection, *infra*, we interpret the "origin device" as corresponding to the feature server.

[13] Our previous discussion with respect to the feature server of Gallick as fully meeting an "origin device" applies equally here and we therefore incorporate that discussion by reference. Regarding claim 40, since the feature server's call setup functions provide call origination as we noted previously, the feature server, in effect, originates a call when executing

utterance of a callee from a destination device, as claimed. Although Gallick teaches (1) capturing the callee's voice utterances, (2) analyzing these utterances to identify the person answering the call at the called facility, and (3) transmitting a message identifying the answering party to the caller (Gallick, col. 3, ll. 44-53; col. 6, ll. 3-20, 47-56; Fig. 2b), it is unclear from Gallick whether the feature server performs this voice analysis.

Gallick, however, teaches that a speaker's phrases are captured and sent to (1) a local voice identification recognizer located on the local personal computer where the softphone resides or, (2) on a *server* on a network where the softphone resides (Gallick, col. 6, ll. 11-14). This teaching therefore would have suggested to ordinarily skilled artisans that voice analysis could be performed on, among other things, the feature server -- a server that is certainly "on a network where the softphone resides." *See, e.g.*, Gallick, Fig. 1.

In any event, Bartholomew discloses a telephone network comprising an "intelligent peripheral" (IP) 23 that provides, among other things, speaker identification/verification via speech recognition and analysis functions (Bartholomew, col. 11, l. 63 - col. 12, l. 40; col. 13, ll. 40-54; col. 14, l. 9-26; col. 20, l. 41 - col. 21, l. 6; Fig. 1). As shown in Figure 3, the IP 23 in effect functions as a server[14] and, when operating in conjunction with the central office service switching point (SSP), is an essential component in

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these call setup functions. Although the Examiner is correct that the caller's softphone terminal is an "origin device originating a call" (Ans. 9), so too is the feature server given the broad scope of the term "origin device" as we indicated previously.

establishing a call to a desired party. *See* Bartholomew, col. 14, ll. 14-26. Therefore, the IP at least in part provides call origination, and thus reasonably constitutes an "origin device."[15]

In view of Bartholomew, and further noting Gallick's teaching that voice analysis functions can be on a server on a network where the softphone resides, it would have been obvious to the skilled artisan at the time of the invention to provide such voice analysis functions at the feature server (origin device) of Gallick. Such a modification is tantamount to the predictable use of prior art elements according to their established functions -- an obvious improvement. *See KSR*, 127 S. Ct. at 1740. Moreover, performing such analysis functions at the feature server would provide additional network-based authentication capabilities in lieu of, or in conjunction with, capabilities of the softphones.

Regarding claims 2, 8, 13, 19, 24, and 30, we agree with the Examiner's findings and conclusions based on the collective teachings of Gallick and Bartholomew articulated on pages 5-7 of the Answer and adopt them as our own.

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[14] As shown in Figure 3, the IP comprises various types of servers including, among other things, an IP communications server 243. *See generally* Bartholomew, col. 16, l. 59 - col. 18, l. 57 (describing capabilities of the IP).

[15] Although Appellants argue that the IP in Bartholomew is an *intermediary* network component and therefore teaches away from the claimed invention (App. Br. 17-19; emphasis added), we nonetheless find that the IP's role in establishing calls fully meets an "origin device" in light of Appellant's Specification.

Regarding claims 4, 11, 15, 22, 26, and 51, we agree with the Examiner's findings with respect to Gallick teaching these limitations (Ans. 4-5) and adopt them as our own.

Regarding claims 41 and 46, since we find that the prior art suggests performing the voice analysis at the feature server in Gallick as noted above, we agree with the Examiner's findings (Ans. 10) that the recited comparing and authentication steps would have likewise been performed at the feature server.

Regarding claims 43, 44, 48, and 49, we agree with the Examiner's findings with respect to Gallick teaching these limitations on page 10 of the Answer and adopt them as our own.

Claims 3, 14, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallick, Bartholomew, and McAllister. We agree with the Examiner's findings (Ans. 7) regarding the disclosure of McAllister as teaching the recited dependent claim limitations and adopt them as our own. We further note that ordinarily skilled artisans would have ample reason on this record to modify the Gallick/Bartholomew system to arrive at the claimed invention essentially for the reasons indicated by the Examiner on page 7 of the Answer. Therefore, the limitations of claims 3, 14, and 25 would have been obvious to ordinarily skilled artisans at the time of the invention based on the collective teachings of Gallick, Bartholomew, and McAllister.

Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallick, Bartholomew, and Baker. We agree with the

Examiner's findings (Ans. 7-8) regarding the disclosure of Baker as teaching the recited dependent claim limitations and adopt them as our own. We further note that ordinarily skilled artisans would have ample reason on this record to modify the Gallick/Bartholomew system to arrive at the claimed invention essentially for the reasons indicated by the Examiner on pages 7 and 8 of the Answer. Therefore, the limitations of claims 9 and 20 would have been obvious to ordinarily skilled artisans at the time of the invention based on the collective teachings of Gallick, Bartholomew, and McAllister.

Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallick, Bartholomew, and La Porta. While Gallick strongly suggests that the origin device is a telephony device, we nonetheless agree with the Examiner's findings (Ans. 8) regarding the disclosure of La Porta as teaching that a server can function as a telephony device and adopt them as our own. We further note that ordinarily skilled artisans would have ample reason on this record to modify the Gallick/Bartholomew system to arrive at the claimed invention essentially for the reasons indicated by the Examiner on page 8 of the Answer. Therefore, the limitations of claims 10 and 21 would have been obvious to ordinarily skilled artisans at the time of the invention based on the collective teachings of Gallick, Bartholomew, and La Porta.

DECISION

We have not sustained the Examiner's rejections with respect to any of the claims on appeal. Therefore, the Examiner's decision rejecting claims 1-4, 8-15, 19-26, 30, 40, 41, 43-46, and 48-52 is reversed.

We have, however, entered new grounds of rejection for (1) claims 23-30, 50, and 51 under 35 U.S.C. § 101; (2) claims 1 and 52 under 35 U.S.C. § 102; and (3) claims 1-4, 8-15, 19, 20-26, 30, 40, 41, 43-45, 46, and 48-51 under 35 U.S.C. § 103.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). This section provides that "[a] new ground of rejection . . . shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
>
> (2) Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REVERSED
37 C.F.R. § 41.50(b)

KIS

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